

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF CALIFORNIA

2008 AUG -5 PM 1:43

UNITED STATES OF AMERICA,

Plaintiff,

v.

Matthew Alexsander SMITH

Defendant,

Magistrate Docket No. 08 MJ 24 29

Case No.

BY Angie Salazar DEPUTY

COMPLAINT FOR VIOLATION OF:

Title 8 U.S.C., Section 1324 (a)(1)(B)(iii) -

Bringing in Illegal Aliens without Presentation;

Title 18 U.S.C., Section 1544 - Misuse of Passport

The undersigned complainant, being duly sworn, states:

COUNT 1

On or about August 4th, 2008, within the Southern District of California, Defendant Matthew Alexsander SMITH, with the intent to violate the immigration laws of the United States, knowing and in reckless disregard that alien, namely Delfino GARCIA-Garcia, Fortino GARCIA-Garcia, and Francisco GAMA-Gonzalez, had not received prior official authorization to come to, enter or reside in the United States, did bring to the United States said aliens, and upon arrival did not bring and present said alien immediately to an appropriate immigration officer at a designated port of entry; in violation of Title 8, United States Code, Section 1324(a)(2)(B)(iii).

COUNT 2

On or about August 4th, 2008, within the Southern District of California, Defendant Matthew Alexsander SMITH did knowingly and willfully use a passport issued or designed for the use of another, with the intent to gain admission into the United States in the following manner, to wit: Defendant applied for entry to the United States by presenting U.S. Passport validly issued to Zachary Everett MOODY, to a Department of Homeland Security, Customs and Border Protection Officer at the San Ysidro Port of Entry, knowing full well that he was not Zachary Everett MOODY, and that the passport was not issued or designed for his use; in violation of Title 18, United States Code, Section 1544.

And the complainant states that this complaint is based on the attached statement of facts, which is incorporated herein by reference.

Angie Salazar
SIGNATURE OF COMPLAINANT
Angie Salazar, Special Agent

SWORN TO BEFORE ME AND SUBSCRIBED IN MY PRESENCE, THIS THE 5th DAY OF AUGUST, 2008.

Ruben B. Brooks
HONORABLE RUBEN B. BROOKS
UNITED STATES MAGISTRATE JUDGE

8/3/08



STATEMENT OF FACTS

I declare under the penalty of perjury that the following statement is true and correct:

Furthermore, the complainant states that **Delfino GARCIA-Garcia, Fortino GARCIA-Garcia, and Francisco GAMA-Gonzalez** are citizens of a country other than the United States; that said aliens have admitted that they are deportable; that their testimony is material, that it is impracticable to secure their attendance at the trial by subpoena; and they are material witnesses in relation to this criminal charge and should be held or admitted to bail pursuant to Title 18, United States Code, Section 3144.

On August 4, 2008, a Customs and Border Protection (CBP) Officer was conducting his assigned duties in lane 17 at the San Ysidro, California Port of Entry. At approximately 2:25 pm, a black Chevrolet pick-up truck approached the primary inspection location. Upon arriving at the primary inspection location, the driver presented a United States Passport bearing the driver's photograph and the name Zachary Everett Moody. The driver provided a negative declaration to a CBP Officer regarding any items being brought into the United States from Mexico. The officer noticed that the driver was exhibiting signs of nervousness; specifically the driver's hands were shaking. The officer asked the driver for the vehicle's registration. The driver complied with the officer's request and reached for the vehicle's glove compartment. As the driver reached for the vehicle's glove compartment, the officer could see individuals in the rear of the truck cabin attempting to conceal themselves. The officer immediately secured the driver of the vehicle. CBP Officers subsequently assisted in removing the suspected undocumented aliens from the rear cabin compartment of the Chevrolet pick-up truck.

The driver was escorted to the Secondary Inspection area at the San Ysidro Port of Entry, along with the six suspected undocumented aliens that were found in the rear cabin of the Chevrolet pick-up truck. While in the Secondary Inspection area, each of the six suspected undocumented aliens were determined to be citizens and nationals of Mexico without any documentation to enter, be in, or pass through the United States legally. Each of the undocumented aliens were placed under arrest and escorted to the processing area.

The driver of the vehicle was initially believed to be Zachary Everett Moody, based upon the presentation of the U.S. Passport at the time of attempted entry; however, the driver's identity was later determined to be that of Matthew Alexander SMITH (hereinafter referred to as Defendant SMITH). A review of Defendant SMITH's criminal history revealed that on August 2, 2008, Defendant SMITH was arrested at the San Ysidro Port of Entry for violation of Title 8 United States Code, Section 1324 – Alien Smuggling.

U.S. Department of State database check determined that U.S. Passport was validly issued to VICTIM Zachary Everett Moody. The photograph on the DS-11 Application for a U.S. Passport executed for the passport is a photograph other than that on the passport presented by Defendant SMITH. Records indicated that on February 16, 2006, VICTIM reported that his passport had been stolen in Tijuana, Mexico.

DEFENDANT STATEMENT (Matthew Alexander SMITH):

On August 4th, 2008, Defendant SMITH provided a post-arrest statement while at the San Ysidro Port of Entry. Defendant SMITH stated that on August 4th, 2008, he presented a U.S. Passport, bearing the identity of Zachary Everett Moody, as his own when he attempted to enter the United States from Mexico. Defendant SMITH admitted that the U.S. Passport he presented was not lawfully issued to him. Additionally, Defendant SMITH admitted that he obtained the fraudulent U.S. Passport from an alien smuggler in Mexico after providing said alien smuggler with a photograph identification document. Defendant SMITH admitted to knowing that it was illegal to misrepresent himself through the use of a United States Passport and to use someone else's identity.

Defendant SMITH stated that he was hired by an unknown individual to unlawfully smuggle undocumented aliens into the United States for \$1,000.00 USD. Defendant SMITH stated that the agreement included increases in payment of \$100.00 each time he successful smuggled undocumented aliens into the United States. Defendant SMITH stated that he knew smuggling undocumented aliens into the United States was illegal. Defendant SMITH stated that he believed that there was between eight and ten undocumented aliens concealed in the Chevrolet pick-up truck he was driving.

MATERIAL WITNESS STATEMENT:

On August 4th, 2008, Material Witness Delfino GARCIA-Garcia provided a post-arrest statement. Delfino GARCIA-Garcia stated that he is citizen and national of Mexico and does not possess any documents that would allow him to enter, be in or pass through the United States legally. Delfino GARCIA-Garcia stated that he agreed to pay \$2,000.00 USD to be smuggled into the United States.

MATERIAL WITNESS STATEMENT:

On August 4th, 2008, Material Witness Fortino GARCIA-Garcia provided a post-arrest statement. Fortino GARCIA-Garcia stated that he is a citizen and national of Mexico and does not possess any documents that would allow him to enter, be in or pass through the United States legally. Fortino GARCIA-Garcia stated that his brother made his arrangements to be smuggled to Los Angeles, California, for the sum of \$800.00.

MATERIAL WITNESS STATEMENT:

On August 4th, 2008, Material Witness Francisco GAMA-Gonzalez provided a post-arrest statement. Francisco GAMA-Gonzalez stated that he is a citizen and national of Mexico and does not possess any documents that would allow him to enter, be in or pass through the United States legally. Francisco GAMA-Gonzalez stated that he agreed to pay \$3,000.00 to be smuggled into the United States. GAMA-Gonzalez was displayed with a photographic lineup, and he identified photograph number four as the driver of the vehicle in which he was smuggled. The individual in photograph number four is Defendant Matthew SMITH. GAMA-Gonzalez stated that he recognized the driver because he was the only person that he did not recognize as being with him in the rear of the pick-up truck. GAMA-Gonzalez also identified Defendant SMITH as being arrested at the same time he (GAMA-Gonzalez) and the other undocumented aliens were arrested by the CBP Officers.